inferred. Neither, it would seem, can the inference raised by those words be overcome by evidence that the settlor subsequently withdrew the deposit, for, as Judge Andrews pointed out in *Mabie* v. *Bailey* (1884) 95 N. Y. 206, "The fact that deposits were subsequently drawn out is not legitimate evidence that he did not intend, when the deposits were made, to create a beneficial trust for the beneficiaries named." But this question of evidence seems not to be the basis on which the court rests its decision; the phrases "tentative trust." "revocable at will," "absolute trust as to the balance," and "declaration of disaffirmance," seem to indicate that the holding is that the trust was properly established, but that it might be revoked. In this the court seems to have gone back a hundred years.

In *Ex parte Pye* (1811) 18 Ves. 139, the English court decided that a gratuitous declaration of trust was binding, and this is now generally admitted to be the law, Lewin on Trusts, 9th ed., 66 and 69; Perry on Trusts, 4th ed., § 96. The only requisites for the creation of such a trust are an intention on the part of the settlor to make a trust and some act to carry out this intention, as, for instance, an unequivocal statement, *Martin* v. *Funk* (1878) 75 N. Y. 134; *Minor* v. *Rogers* (1873) 40 Conn. 512; and while in the proof of the fact of that intention it might be pertinent to show that notice was given to the beneficiary, the notice is not a component part of the trust, and failing to give it will not affect the validity of the trust, *Fletcher* v. *Fletcher* (1844) 4 Hare 67; *Martin* v. *Funk*, supra. Unlike the gift of a chattel, which requires that title be passed, under a gratuitous declaration of trust the title remains in the settlor, and the trust derives its validity solely from the act and intention of the settlor; the beneficiary's interest is then created, and once created equity should protect it, as it would any other vested right, not only from a stranger but from the settlor himself, *Viney* v. *Abbott* (1872) 109 Mass. 300; *Mabie* v. *Bailey*, supra. The court distinguishes savings bank trusts from others, but there seems to be no reason why the cestui under such a trust should not receive the same protection that he would under a trust in any other bank, nor is it clear why the declarations which would establish a trust in another bank will fail when used in a savings bank. The case seems hard to reconcile with the reasoning of the earlier New York cases mentioned by the court, and the principles laid down in the cases from other jurisdictions seem clearly opposed to the holding. While it happens that usually some one of the requirements enumerated by the New York court is found, the presence of such a fact seems never to have had a determining influence and there seems to be no good reason why it should have. *Sayer* v. *Weil* (Ala. 1892) 15 L. R. A. 545; *Richardson* v. *Richardson* (1867) L. R. Eq. Cas. 686.

ACTIONS ACCRUING UNDER FOREIGN STATUTES.—The authorities collected in the recent case of *Slater* v. *Mexican Nat. R. Co.* (1904) 194 U. S. 120, indicate that there is much confusion as to the principles which should govern the courts of one state when considering an action which accrued under the statute of another state. In that case the plaintiff's intestate was killed in Mexico, where a statute providing for a right of action gave damages in the form of a pension.

Suit was brought in Texas, where a statute also granted a right of action, but provided for damages in a lump sum. The lower court found that it could not award damages in a law action in accordance with the Mexican statute, but this it held was a difference of procedure, and on the ground that the right existed in both jurisdictions, awarded damages according to the Texas statute. On appeal the court dismissed the action, holding that it would be unjust to the defendant to enforce the right otherwise than as provided by the Mexican statute.

The difficulty in the cases seems to have arisen from the failure of the courts to distinguish between rights recognized by the common law and those created by statutes. The existence of a cause of action is determined by the law of the jurisdiction in which the act occurs, and since the law of that jurisdiction can have no extraterritorial force, no wrong is done under a law foreign to it, nor can an action be maintained in a foreign court unless it be by comity. When, appealing to comity, an action is brought in our courts for a wrong done abroad, the foreign law should be proved, but if it is not, our courts presume that the general principles of the common law, which are considered "consonant with reason and justice," prevail in the foreign jurisdiction, I COLUMBIA LAW REVIEW, 489; *Whitford* v. *Panama R. Co.* (1861) 23 N. Y. 465, and that a person is there protected from bodily harm and in his personal freedom. But a court can use only its own procedure, and it becomes a material inquiry whether under that procedure the foreign right can be enforced, *Pullman Co.* v. *Laurence* (1897) 74 Miss. 782. In common law actions the remedy and the right are regarded as separate elements, and the remedy may be modified without affecting the right, *Campbell* v. *Holt* (1885) 115 U. S. 620. The court may therefore presume that such a foreign right will be enforced by the local procedure, *Scott* v. *Seymour* (1862) 1 H. & C. 217; Pollock on Torts, 5th ed. p. 196. When the right is created by the arbitrary declaration of the local legislature, however, there is no presumption that the right exists abroad, *Leonard* v. *Columbia Steam Nav. Co.* (1881) 84 N. Y. 48. It must be proved to exist, and when proved it must be accepted with the limitations imposed by its creator and with the remedy provided if that remedy involves a limitation, *Hill* v. *Board of Supervisors* (1890) 119 N. Y. 344. Courts have refused to enforce such foreign rights even when proved, *Anderson* v. *M. & St. P. R. Co.* (1875) 37 Wis. 321, but this position is not usually taken when it is shown that a similar right exists by statute in the local jurisdiction, *Law* v. *Western Ry. of Ala.* (1898) 91 Fed. 817. These similar statutes, however, are necessary only to show that the right claimed is not obnoxious to the local public policy, *Herrick* v. *M. & St. L. R. Co.* (1883) 31 Minn. 11, and the question for the court should be whether under its own procedure it can administer the foreign statute. Absolute conformity is not necessary, *Wooden* v. *R. R. Co.* (1891) 126 N. Y. 10, but if the local procedure materially alters the foreign right, the court should decline to enforce the right. In the principal case the court found that it could not administer a pension, and since damages in any other form would materially alter the right, it properly declined to allow the action to be maintained.